

**REMARKS**

Claims 1-36 are now present in this application, with claims 31-36 being added by the present amendment. Claims 1, 16, and 23 are the sole remaining independent claims in connection with the present application.

**Allowable Subject Matter**

Initially, Applicants wish to thank the Examiner for the indication that claims 6, 12, 20, and 28 contain allowable subject matter, and would be allowed if rewritten in independent form including all the limitations of the base claim and any intervening claims. As Applicants believe that the independent claims of the present application are currently allowable, these claims have not been rewritten in independent form at this time.

**Prior Art Rejections**

The Examiner has rejected claims 1, 3, 4, 9, 10, 15-19, and 23-26 under 35 U.S.C. § 102(b) as being anticipated by Takeda. This rejection is respectfully traversed.

**Preferred Embodiment of the Present Application**

The present application, in a preferred embodiment, is directed to a switching device as shown in exemplary format in Fig. 2 for example, and more specifically to an actuator element for a switching device, as shown in Fig. 1 of the present application for example. The actuator element 2 is shown in Fig. 1 for example, is fixed at one end (such as end 2a connecting to a housing part of the switching device 3 for example), and is connected to a movable contact part (such as element 4a of Fig. 1 for example) so as to be moveable at another end (end 2b as shown

in Fig. 1 for example). As is shown in Fig. 1 for example, the actuator element is curved in shape in an operating state in which is a switching function of the switching device is not triggered. Further, a deflection element (such as deflecting pin 5 as shown in Fig. 1 for example) exerts a counter force partially counteracting the curve of the actuator element only in the operating state in which the switching function of the switching device is not triggered.

As discussed in paragraphs 11 and 12 of the present application for example, the deflecting element acts to exert the counter force to an actuator element which is fixed at one end. This is because such an actuator element which is fixed at one end can be subjected to stress and/or loading on account of a relatively high lever effect during its thermally induced change in shape. Potential disadvantages are largely eliminated by the deflecting element, wherein the deflecting element exerts its counterforce only in the operating state in which the switching function of the switching element is not triggered, to counteract the curve of the actuator element in that operating state.

### **Distinctions Over the Prior Art**

Claim 1 of the present application has now been clarified, by adding originally present limitations back into the claim, to state that the actuator element is fixed at one end and is connected to a moveable contact part at another end. To the contrary, in the Takeda patent, the bimetal plate 8 is held on both sides (by grippers 4A for example). As such, it does not incur the stress or loading which occurs in a switching device with an actuator element fixed at one end and moveable at another end. Somewhat similar amendments have been made to each of independent claims 16 and 23.

In addition, Applicants have further amended each of independent claims 1, 16, and 23, to clarify that a deflecting element exerts a counter force counteracting a curve of the actuator element only in the operating state in which the switching function of the switching device is not triggered. Thus, the force is exerted by the deflecting element only if the actuator element, as set forth in claim 1 for example, is curved. Accordingly, the counter force need not be exerted if the actuator element assumes a strayed or stretched out shape. This is clearly not the case in connection with the bimetal plate 8 of the Takeda patent, wherein central support element 5 always exerts pressure on the plate 8. Somewhat similar reasoning applies to each of independent claims 16 and 23.

Accordingly, for at least the aforementioned reasons, Applicants respectfully submit that each of independent claims 1, 16, and 23 is allowable over the Takeda reference. Accordingly, withdrawal of the Examiner's rejection and allowance of each of the independent claims is respectfully requested. Further, Applicants respectfully submit that each of the dependent claims is allowable for at least the reasons previously set forth regarding their corresponding independent claims.

#### **Additional Prior Art Rejections**

The Examiner has further rejected claims 7, 13, 14, 21, and 29 under 35 U.S.C. § 103 as being unpatentable over Takeda in view of Busch et al. This rejection is respectfully traversed.

Initially, with regard to the Examiner's rejection, Applicants respectfully submit that even assuming *arguendo* that Takeda and Busch et al. could be combined, which Applicants do not admit, Busch et al. would still fail to makeup for at least the aforementioned deficiencies of Takeda. Accordingly, for at least the reasons previously provided regarding the corresponding

independent claims, Applicants respectfully submit that each of dependent claims 7, 13, 14, 21, and 29 are allowable over the alleged combination of Takeda and Busch et al., even assuming *arguendo* that the references could be combined.

Additionally, Applicants do not believe that the Examiner has provided proper motivation for combining the teachings of Takeda with that of Busch et al. The Examiner has merely stated that because Takeda and Busch et al. are from the same field of endeavor, then the teachings of Busch et al. **could be** recognized in the inventions of Takeda. However, this is not **evidence** of motivation, teaching, or suggestion for one of ordinary skill in the art to combine the teachings of Busch et al. with those of Takeda. In order to make a proper combination of references, the Examiner must provide evidence as to why one of ordinary skill in the art would have been motivated to select and combine the referenced teachings. Relying on common knowledge or common sense of a person of ordinary skill in the art without any specific hint or suggestion of this in a particular reference is not proper standard for reaching the conclusion of obviousness. See *In re Sang Lee*, 61 USPQ 2d 1430 (Fed. Cir. 2002).

Somewhat similarly, the Examiner relies on obvious design choice as a reason for combining teachings of the various references. This is again not the proper standard for obviousness. If the Examiner is relying on personal knowledge to support a finding of what is known in the art, the Examiner **must provide** an Affidavit or Declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2) and MPEP 2144.03(c). Accordingly, Applicants respectfully challenge the Examiner's use of design choice and respectfully require the Examiner to withdraw the rejection or provide an Affidavit or Declaration as set forth above if the rejection is to be maintained.

In any event, withdrawal of the rejection and allowance of each of the various claims in connection with the present application is respectfully requested.

### **New Claims**

By the present Amendment, Applicants have added new dependent claims 31-36 in an effort to provide further protection for Applicants' invention. Applicants respectfully submit that these claims are allowable for at least the reasons previously provided regarding their corresponding independent claims, and further submit that the claims are additionally allowable for various limitations present therein.

### **CONCLUSION**

Accordingly, in view of the above amendments and remarks, reconsideration of all outstanding objections and rejections and allowance of each of claims 1-36 in connection with the present application is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicants hereby petition for a two (2) month extension of time for filing a reply to the outstanding Office Action and submit the required \$420 extension fee herewith.

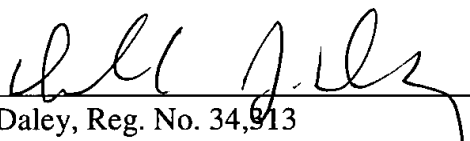
If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any

additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By

  
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